STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PAUL CHARLES SEEWALD,

Defendant-Appellee.
_____/

Supreme Court No. 150146

Court of Appeals No. 314705

Wayne Cir. Ct. No. 12-010198-02-FH

BRIEF ON APPEAL OF APPELLANT

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

This Court granted leave to appeal on November 26, 2014. This Court has jurisdiction pursuant to MCL 770.3(6); MCR 7.301(A)(2).

STATEMENT OF QUESTION PRESENTED

1. Michigan law makes it a crime to conspire "to commit a legal act in an illegal manner." MCL 750.157a. Does a conspiracy fall outside the scope of MCL 750.157a if the conspirators agree not just to commit the legal act but also to use the illegal manner?

   The People answer: No.

   Defendant's answer: Yes.

   District court's answer: No.

   Trial court's answer: Yes.

   Court of Appeals' majority answer: Yes.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES INVOLVED

MCL 750.157a provides in pertinent part:

Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein:

(a) Except as provided in paragraphs (b), (c) and (d) if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of $10,000.00 may be imposed.

(b) Any person convicted of conspiring to violate any provision of this act relative to illegal gambling or wagering or any other acts or ordinances relative to illegal gambling or wagering shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than $10,000.00, or both such fine and imprisonment.

(c) If commission of the offense prohibited by law is punishable by imprisonment for less than 1 year, except as provided in paragraph (b), the person convicted under this section shall be imprisoned for not more than 1 year nor fined more than $1,000.00, or both such fine and imprisonment.

(d) Any person convicted of conspiring to commit a legal act in an illegal manner shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than $10,000.00, or both such fine and imprisonment in the discretion of the court.

MCL 766.13 provides in pertinent part:

If the magistrate determines at the conclusion of the preliminary examination that a felony has been committed and that there is probable cause for charging the defendant with committing a felony, the magistrate shall forthwith bind the defendant to appear within 14 days for arraignment before the circuit court of that county.

MCR 6.110(E) provides in relevant part:

If, after considering the evidence, the court determines that probable cause exists to believe both that an offense not cognizable by the

district court has been committed and that the defendant committed it, the court must bind the defendant over for trial.

INTRODUCTION

When Don Yowchuang, a staffer for Congressman Thaddeus McCotter, realized he had insufficient valid nominating petitions to submit to the Secretary of State to place the Congressman's name on the 2012 primary ballot, he entered into an agreement with another employee of the Congressman, defendant Paul Seewald, that threatened the integrity of the electoral process. Their agreement, one they admitted under oath, was to submit sufficient signatures to get him on the 2012 ballot, itself a perfectly legal act, by committing fraud—by signing their names on nominating petitions that the actual circulators had failed to sign to indicate that they had circulated the petitions, when in fact, they had not.

Reasoning that two wrongs do in fact make a right, the Court of Appeals majority held that defendants Seewald and Yowchuang could not be charged for their "conspir[acy] to commit a legal act in an illegal manner," MCL 750.157a, because they also had an illegal immediate goal: to defraud the Secretary of State. As the Court of Appeals majority saw it, the defendants could not violate this provision because "they conspired to commit an illegal act in an illegal manner." (Slip op, p 4.) This reasoning means that a defendant can get away with agreeing to commit a legal act in an illegal manner simply by also agreeing to the necessary step of using an illegal manner. Under the Court of Appeals' approach, agreeing to use the illegal manner taints the ultimate act, rendering it also illegal. This analysis fails to apply the plain statutory text and essentially eliminates the felony crime of conspiracy to commit a legal act in an illegal manner. Worse, it makes it a defense to the charge to argue that one's ultimate goal was to break the law.

Thus, this Court should reverse the judgment of the Court of Appeals and reinstate the felony conspiracy to commit a legal act in an illegal manner charge.

STATEMENT OF FACTS

The facts are undisputed. In May 2012, Paul Seewald was Congressman Thaddeus McCotter's district director. (116a-117a.) Don Yowchuang was the Congressman's deputy district director. (24a-26a.) One of Yowchuang's duties was to collect enough signatures on nominating petitions to have Congressman McCotter's name placed on the ballot. (25a-27a.) Given the size of the 11th Congressional District, MCL 168.544f required the Congressman to submit 1,000 valid signatures to qualify for placement on the 2012 primary ballot. A maximum of 2,000 signatures could be submitted. *Id*. Congressman McCotter instructed his staff to collect and submit the maximum 2,000 signatures. (57a; 32a-33a.)

On May 14, 2012, Yowchuang noticed that a number of nominating petitions that had been turned in to the office had not been signed by the circulator. (28a-29a.) Yowchuang signed several of them as the circulator, despite the fact that he had not circulated any petitions. (28a; 15a.) Yowchuang also approached Seewald and Lorranie O'Brady, Congressman McCotter's scheduler, to sign other unsigned nominating petitions as circulators, even though they had not circulated those petitions. (33a.)

Yowchuang testified that their goal was to submit signatures in order to get McCotter on the ballot:

Q: You discussed that with him [Seewald] in terms of "would you sign this," or what did you say to him?

A: You know, I don't remember the discussion, but it was just something "you know these don't have a signature. Would you mind signing them?"

Q: Now your purpose in doing that was simply to make these signatures count towards the nomination?

A: Yes.

Q: At the time though, you honestly and reasonably believed that they had been signatures of registered voters in the district?

A: Yes.

***

Q: And you are agreeing to do this simply to get him on the ballot. I mean that is the ultimate purpose here?

A: Yes.

***

Q: Okay. It's just for the legal purpose of getting him on the ballot?

A: Yes, and getting to 2,000.

Q: Okay. Getting to 2,000 signatures?

A: Yes. [33a]

Seewald confirmed this testimony, admitting he signed as circulator unsigned nominating petitions that Yowchuang presented to him for the purpose of having the petitions counted to get the Congressman on the ballot. (118a-119a; 16a-23a.) Seewald testified:

A: [ ] I was asked to sign them.

Q: By whom?

A: Don Yowchuang.

Q: And the purpose in that was to get Mr. McCotter on the ballot?

A: That would be correct.

Q: And that is the reason why it was done?

A: Well, yes, to include these with the petitions.

***

Q: You believed at the time that these were valid signatures that had been circulated?

A: That is correct.

Q: Just by someone else, not by you?

A: That is correct.

Q: You signed as the circulator for the purpose of having those signatures included in the count?

A: Correct.

***

Q: It was an agreement you had between the two of you to make this a good petition. Right?

A: Correct. [55a-56a; 30a-31a]

Yowchuang also indicated that in 2008 he and Seewald had turned in bogus petitions to the Secretary of State which contained photocopied signatures and that the Secretary of State's office had not discovered the subterfuge. (34a.)

Congressman McCotter testified that both Seewald and Yowchuang confessed to him that they had signed petitions as circulators when they did not actually circulate them. (58a.)

Following its investigation into the irregular signatures, the Attorney General charged Seewald with signing nominating petitions he did not circulate, a

misdemeanor under MCL 168.544c(8)(a),[1] and with conspiracy to commit a legal act in an illegal manner, a felony under MCL 750.157a(d). Yowchuang was charged with these two crimes as well as with ten felony counts of election-law forgery under MCL 168.937.

PROCEEDINGS BELOW

During the Attorney General's investigation Seewald and Yowchuang voluntarily appeared with counsel and answered questions under oath, first on June 4, 2012, and again for follow up questions on June 29, 2012. On August 9, 2012 a felony warrant was issued. (35a.) A preliminary examination was held in the 16th District Court. During the hearing, the under-oath interviews of Seewald and Yowchuang were admitted into evidence as exhibits 19, 20, 21 and 22. (55a-56a.) The Assistant Attorney General argued the district court should bind the defendants over on the felony charge of conspiracy to commit a legal act in an illegal manner, arguing that while the signing of the petitions was a misdemeanor, the conspiracy was "the admitted agreement to get something and have it considered as valid. The act of filing a valid petition is a lawful act." (59a-60a.)

The district court bound Seewald and Yowchuang over for trial on several counts including the felony conspiracy to commit a legal act in an illegal manner charge. (65a-68a.) With reference to the felony-conspiracy charge, the examining

[1] As noted in footnote 2 of the Court of Appeals' majority opinion, the relevant section, the text of which is unchanged, is now found at MCL 168.544c(11) under 2014 Public Act 94. *People v Seewald; People v Yowchuang*, unpublished opinion per curiam of the Court of Appeals, issued August 5, 2014 (Docket Nos. 314705 and 314706).

magistrate stated that there was a conspiracy, an agreement between the two defendants who signed false nominating petitions and that it was "clear that they were designed to get the candidate Mr. McCotter on the ballot." (65a-66a.) The magistrate concluded that it was proper to bind the defendants over on the felony conspiracy to commit a legal act in an illegal manner charge because the defendants thought they were going to achieve a legal act when they agreed to sign as non-circulators. (67a.) A felony information was filed the next day. (70a-73a.)

Seewald and Yowchuang filed motions to quash the conspiracy to commit a legal act in an illegal manner charge. Seewald argued that he could not have conspired to commit the legal act of submitting valid signatures because the signatures were invalid as a result of the improper circulator signatures. (80a.)

The People opposed the motion, noting that Seewald and Yowchuang had both testified that they believed the signatures on the petitions were those of registered voters and that they had agreed to sign as circulators in order to get the Congressman on the ballot. (93a-98a.)

The Third Judicial Circuit Court, Judge Margie R. Braxton, granted defendants' motions to quash the bindover on the felony charge of conspiracy to commit a legal act by illegal means. (109a.) The circuit court based its decision on its conclusion that the defendants conspired to do something illegal, not something legal. (*Id.*)

Defendant Seewald pleaded guilty to nine misdemeanor counts of signing a nominating petition with a name other than his own, MCL 168.544c(8)(a), and was sentenced to a term of two years' probation. (115a.)

Defendant Yowchuang pleaded nolo contendere to ten felony counts of forgery for making a false nominating petition with the intent to defraud, MCL 168.937. Yowchuang also pleaded nolo contendere to six misdemeanor counts of signing a nominating petition with a name other than his own, MCL 168.544c(8)(a), and was sentenced to a term of three years' probation, with one year in the Wayne County Jail if he violated probation. (114a.)

The People appealed the dismissal of the felony conspiracy count. The Michigan Court of Appeals affirmed in a 2-1 opinion. (7a-11a.) *People v Seewald; People v Yowchuang*, unpublished opinion per curiam of the Court of Appeals, issued August 5, 2014 (Docket Nos. 314705 and 314706). The majority concluded that the "purpose" and "immediate goal" of the conspiracy was to defraud the Secretary of State, meaning defendants only conspired to commit an illegal act in an illegal manner. (10a-11a.) Judge Jansen dissented, indicating the felony conspiracy charge should be reinstated because "the end goal of defendants' conspiracy was to place Congressman McCotter's name on the ballot—itself a legal act." (12a.)

The People appealed and this Court granted leave to appeal as to defendant Seewald (13a.), holding Yowchuang's case in abeyance. (14a.)

ARGUMENT

I. The defendants agreed to accomplish a lawful act (filing nominating petitions to get Congressman McCotter on the ballot) by unlawful means (falsely signing petitions as the circulators), and the fact that they agreed to use this unlawful means does not shield them from the felony-conspiracy charge.

A. Standard of Review

Although a district court's decision regarding whether to bind a defendant over for trial is reviewed for an abuse of discretion, when, as here, the appeal challenges the trial court's interpretation of a statute, the reviewing court applies de novo review. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006); *People v Flick*, 487 Mich 1, 8–9; 790 NW2d 295 (2010) ("Whether conduct falls within the scope of a penal statute is a question of statutory interpretation.").

Unfortunately, there are several published Court of Appeals' opinions that cite the wrong standard of review. For example, *People v Miller*, 288 Mich App 207, 209; 795 NW2d 156 (2010), states that the circuit court's opinion is reviewed for an abuse of discretion. This is a misstatement because the Court of Appeals and this Court sit in the same position as the circuit court in ruling on a motion to quash. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). Indeed *Miller* itself cited *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001), which correctly indicates that it is the district court's decision that is reviewed for an abuse of discretion, not the circuit court's decision.

Miller is not alone in stating the wrong standard of review. See, e.g., *People v Waterstone*, 296 Mich App 121, 152–153; 818 NW2d 432 (2012), which

contradictorily says the Court of Appeals reviews the district court's bindover decision *and* a trial court's decision on a motion to quash for an abuse of discretion. *Waterstone* cites *People v Fletcher*, 260 Mich App 531, 551–552; 679 NW2d 127 (2004), for this proposition, and *Fletcher* in turn cites *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997), for this erroneous statement. This Court should consider disavowing this erroneous standard of review which has found its way into numerous published cases.

Thus, the circuit court's decision is not entitled to any deference. And this is especially the case here, because the interpretation of a statute is a question of law which this Court reviews de novo. *Flick*, 487 Mich at 9.

B. The law regarding preliminary examinations

The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Perkins*, 468 Mich 448, 452; 662 NW2d 727 (2003). Thus, a defendant must be bound over for trial after the preliminary examination if the district court determines a felony has been committed and there is probable cause to believe that the defendant committed it. MCL 766.13; MCR 6.110(E); *People v Yost*, 468 Mich 122, 125–126; 659 NW2d 604 (2003). "Some evidence must be presented regarding each element of the crime or from which those elements may be inferred." *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998).

Probable cause requires a lower quantum of proof than beyond a reasonable doubt and exists when there is evidence "sufficient to cause a person of ordinary

prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt on each element of the crime charged." *Yamat*, 475 Mich at 52; *Hudson*, 241 Mich App 268, 277; 615 NW2d 784 (2000). A preliminary examination "is ordinarily a much less searching exploration into the merits of a case than a trial, simply because its function is the more limited one of determining whether probable cause exists to hold the accused for trial." *People v Drake*, 246 Mich App 637, 640; 633 NW2d 469 (2001), quoting *Barber v Page*, 390 US 719, 725; 88 S Ct 1318; 20 L Ed 2d 255 (1968). Moreover, a magistrate should not refuse to bind over a defendant for trial merely because the evidence "raises reasonable doubt of the defendant's guilt." *Yost,* 468 Mich at 128.

C. Principles of statutory construction

When engaging in statutory interpretation, a court's primary aim is to discern and give effect to the Legislature's intent. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 159; 615 NW2d 702 (2000). Because the most reliable evidence of the Legislature's intent is the language of the statute, the Court begins with an examination of the statute's plain language, affording words their common and ordinary meaning. *McCahan v Brennan*, 492 Mich 730, 736; 822 NW2d 747 (2012). When the Legislature has clearly expressed its intent in the language of the statute, no further construction is required or permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

D. The prohibition against conspiring to commit a lawful act in an illegal manner is of ancient origin

"A famous maxim states that an indictment 'ought to charge a conspiracy, either to do an unlawful act, or a lawful act by unlawful means.'" *Developments in the law: Criminal conspiracy*, 72 Harv LR 922, 940 (1959) (citing *King v Jones*, 4 B & Ad 343, 349; 110 Eng Rep 485, 487 (KB 1832)). See also *Commonwealth v Hunt*, 45 Mass (4 Met) 111, 123 (1842) (Shaw, CJ) ("Conspiracy is usually defined as an agreement between two or more persons to achieve an unlawful object or to achieve a lawful object by unlawful means.").

The Court of Appeals in *People v Potts*, 44 Mich App 722, 727; 205 NW2d 864 (1973), cited 3 Gillespie, Michigan Criminal Law & Procedure (2d ed.), § 1224, pp. 1615–1616, for the following proposition:

> To constitute a criminal conspiracy [under the common law], there must be a combination of two or more persons, by some concerted act, to accomplish some criminal or unlawful purpose, or to accomplish some lawful purpose, not in itself criminal, by criminal or unlawful means.

And, as this Court explained in a summary order in *People v Tinskey*, 394 Mich 108; 228 NW2d 782 (1975):

> The somewhat indeterminate common-law definition of conspiracy, as a combination to accomplish some criminal or unlawful purpose or end or to accomplish a lawful purpose or end by criminal or unlawful means (*People v Tenerowicz*, 266 Mich 276, 285; 253 NW 296 (1936)), was replaced by 1966 PA 296, which defines the object of the conspiracy as the 'commit(ting of) an offense prohibited by law' or of 'a legal act in an illegal manner.' MCL 750.157a.

E. Analysis

1. The defendants' admitted agreement falls within the plain language of the statute.

The plain language of MCL 750.157a provides that "[a]ny person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy." It thus prohibits conspiracies where the end—the ultimate goal—of the conspiracy is illegal ("to commit an offense prohibited by law"). And it also prohibits conspiracies where the end is legal, but the means are illegal ("to commit a legal act in an illegal manner"). The Legislature's decision to include both types within the scope of conspiracy makes sense, because "unlawfulness is equally objectionable, whether it represents the end sought to be achieved, or the means to be employed to bring about that result." Perkins & Boyce, *Criminal Law* (New York: Foundation Press, 3d ed. 1982), p 682. That is why "the fact that unlawfulness of either the end or the means is sufficient for conspiracy has been repeated time and again." *Id.* at 684–685. The purpose of the conspiracy statute is to protect society from the increased danger presented by group activity as opposed to individual activity. *People v Sammons*, 191 Mich App 351, 374; 478 NW2d 901 (1991).

Here, both defendants admitted under oath that the goal of their conspiracy was to get the Congressman's name placed on the ballot. During the preliminary examination, Seewald was asked if "the purpose" of his signing the petitions he did not circulate "was to get Mr. McCotter on the ballot." He answered "that would be correct." (31a.) Seewald was further asked if he signed as circulator "for the

purpose of having the[ ] signatures included in the count." He answered "Correct," (*id.*), thereby admitting that he agreed to the legal act of submitting signatures in order to get the Congressman's name on the ballot.

Similarly, Yowchuang was asked if the purpose in his asking Seewald to sign as circulator "was simply to make the[ ] signatures count towards the nomination." He answered "Yes." (33a.) Yowchuang further answered "yes" to the question whether he did this to get the Congressman on the ballot. (*Id.*)

Given these admissions from the defendants' own mouths, the district court was correct in concluding that probable caused existed to conclude that the defendants conspired to commit a legal act in an illegal manner. One would be hard pressed to come up with stronger evidence than sworn testimony from each defendant as to the goal of his conspiracy. And submitting a nominating petition with signatures to place a name on the ballot is undoubtedly a legal act. It can be done in a legal manner, and is not itself prohibited by law. Quite the contrary, it is expressly authorized by law. MCL 168.133.

The Court of Appeals majority asserted that the People's argument that placing the Congressman's name on the ballot was the legal objective of the conspiracy "expand[ed] the scope of the conspiracy beyond all reason." (10a.) Not so. The scope of the conspiracy being charged and argued by the People is exactly what the defendants admitted under oath. Further, the statutory language is "conspiring to commit a legal act in an illegal manner," so the agreement has to encompass *both* the legal act *and* the illegal manner. Indeed, the felony-conspiracy

charge recognizes that the statute itself looks at whether the purpose is to achieve something otherwise legal, and here the defendants candidly admitted under oath that this was their overall goal. It is the Court of Appeals' majority that altered the scope of the conspiracy by focusing on only the defendants' "immediate goal" and using that as an excuse to ignore "their ultimate goal." (10a-11a.)

While the Court of Appeals' majority accused the district court of misinterpreting MCL 750.157a(d) (11a.), it was actually the Court of Appeals that misinterpreted the statute. The Court of Appeals' majority treated the presence of the initial illegal step (here, falsely signing to say they were circulators) as meaning the larger act (submitting the petitions) was therefore illegal too, since it was done fraudulently. This view effectively eliminates the legal-act-in-an-illegal-manner conspiracy crime because the presence of an illegal manner would always mean the ultimate act could not be legal. Indeed, under the Court of Appeals majority's reading of MCL 750.157a(d), it is difficult to see how a defendant could *ever* commit a legal act in an illegal manner.

Judge Jansen made precisely this point in her dissent:

> [T]he end goal of defendants' conspiracy was to place Congressman McCotter's name on the ballot—itself a legal act—and not merely to falsely sign the nominating petitions as circulators. Defendants' decision to falsely sign the nominating petitions as circulators in violation of MCL 168.544c was simply a necessary but illegal step taken in furtherance of their ultimate lawful objective. [12a.]

2. The fact that the evidence showed that the defendants conspired to commit an illegal act does not foreclose a finding that they also conspired to commit a legal act in an illegal manner.

Both the circuit court and Court of Appeals majority found the evidence at the preliminary examination showed the defendants conspired to commit an illegal act. The People do not dispute this fact. But merely affixing Seewald's or Yowchuang's name to a nominating petition lacking the actual circulator signature was not the goal of *the charged* conspiracy. Rather, the evidence also showed a conspiracy, i.e., a conspiracy to commit a legal act (submitting signatures from qualified and registered electors to the Secretary of State) in an illegal manner (by falsely attesting that they had circulated the petitions). Contrary to the panel majority on the Court of Appeals, the existence of the first immediate conspiracy did not somehow foreclose or preclude a finding that the defendants also had a second greater conspiracy. The findings are not mutually exclusive. See, e.g., *United States v Ruiz*, 386 Fed App'x 530, 533 (CA 6, 2010) (the two crimes "are interdependent rather than mutually exclusive"). The fact that the evidence at the preliminary examination established a crime that had not been charged (conspiracy to commit an illegal act) is simply unrelated to the question whether the undisputed evidence fell within the scope of the greater charged crime of conspiring to commit a legal act in an illegal manner was shown.

The panel majority's analysis conflicts with a prior Court of Appeals' decision, *People v Duncan*, 55 Mich App 403; 222 NW2d 261 (1974).[2] In *Duncan*, two police officers were convicted of conspiracy to do a legal act in an illegal manner and of solicitation of a bribe after offering to return certain property that was then being held in the police department's property room upon the payment of $800 by the owner. Returning property to a citizen from the police property room is obviously a legal act, but the defendants in *Duncan* did it in an illegal manner, i.e., while soliciting a bribe. The fact that the defendants conspired to solicit a bribe, an illegal act, in no way precluded a finding that they had also conspired to commit a legal act, returning property, in an illegal manner (while soliciting a bribe). In contrast, the panel majority here said that the "purpose" and "immediate goal" of Seewald and Yowchuang's conspiracy was to defraud the Secretary of State meaning defendants only conspired to commit an illegal act. But if that reasoning had been applied in *Duncan*, the court would have held that the defendants did *not* conspire to commit a legal act in an illegal manner because they solicited a bribe and thus committed an illegal act. Again, the majority on the Court of Appeals improperly limited the scope of the defendants' admitted conspiracy.

The Court of Appeals majority also stated "at no time during their conspiracy did defendants engage in a 'legal act.' " (10a.) But the relevant question is not what the defendants did, but what *they agreed to do*. This is because a conspiracy is a

[2] Affirmed 402 Mich 1; 260 NW2d 58 (1977). Subsequent opinion granting the defendants a new trial, 96 Mich App 614; 293 NW2d 648 (1980), rev'd 414 Mich 877; 322 NW2d 714 (1982).

separate and distinct offense from the offense which is the object of the conspiracy. *People v Norwood*, 312 Mich 266, 271; 20 NW2d 185 (1945); *People v Ormsby*, 310 Mich 291, 297; 17 NW2d 187 (1945). Under Michigan law a conspiracy is complete when the agreement is reached, and no overt act in furtherance of the conspiracy must be shown to support a conviction. *People v Bushard*, 444 Mich 384, 394; 508 NW2d 745 (1993); *People v Meredith (On Remand)*, 209 Mich App 403, 408; 531 NW2d 749 (1995) ("An overt act by the defendant is not required to prove a conspiracy, because the essence of the offense is the agreement itself."); *People v Burgess*, 153 Mich App 715, 732; 396 NW2d 814, 825 (1986) ("[c]onspiracy requires proof of the unlawful agreement; nothing further is required.") Thus, the crime of conspiracy focuses on the agreement, recognizing that the law should discourage people from working together to break the law or to commit a legal act in an illegal manner.

Here, Seewald and Yowchuang reached their agreement before they signed the petitions they had not circulated. Consequently, the district court did not misinterpret the statute in binding defendants over on the charge that they conspired to commit a legal act in an illegal manner.

3. When the evidence supports the existence of two crimes, the prosecutor has discretion regarding which crime to charge.

"[T]he decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor." *People v Venticinque*, 459 Mich 90, 100; 586 NW2d 732 (1998). A prosecutor has broad charging discretion and may charge any offense

supported by the evidence. *People v Nichols*, 262 Mich App 408, 415; 686 NW2d 502 (2004). If two statutes prohibit different conduct (i.e., an additional element is required to convict the defendant of one crime, but not the other), the prosecutor has the discretion to charge under either statute. *People v Werner*, 254 Mich App 528, 536–537; 659 NW2d 688 (2002). See also *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672, 683–684; 194 NW2d 693 (1972) (to determine under which of two applicable statutes a prosecution will be instituted is an executive function and a part of the duties of the prosecutor).

Here the evidence supported a finding that defendants conspired to commit an illegal act contrary to MCL 750.157a(a), and also conspired to commit a legal act in an illegal manner contrary to MCL 750.157a(d). While the Court of Appeals majority was correct in noting that the evidence showed defendants committed the misdemeanor offense under MCL 750.157a(a) (11a.), it was wrong in concluding the greater felony-conspiracy offense had not also been shown.

When a court determines under which statute a defendant can be prosecuted, the court intrudes on the power of the executive branch to exercise prosecutorial discretion, violating the separation-of-powers doctrine. Const 1963, art 3, § 2; *People v Jones*, 252 Mich App 1, 6; 650 NW2d 717 (2002). Here, the prosecution had good reason to exercise its discretion by charging the higher felony-conspiracy offense. The defendants, after all, were attempting to subvert the electoral process. Charging the defendants under MCL 750.157a(d) was consistent with the Michigan Constitution's expressed concern regarding "the purity of elections" and "guard[ing]

against abuses of the elective franchise." Const 1963, art 2, § 4. Given that the felony charge filed by the People was not unconstitutional, illegal, or ultra vires, the charging decision was exempt from judicial review. *Jones*, 252 Mich App at 6–7.

The Court of Appeals majority decision should be reversed because it is inconsistent with prosecutorial discretion and negatively impacts the People's ability to prosecute other conspiracies to commit a legal act in an illegal manner.

4. The fact that valid voter signatures became uncountable *after* Seewald and Yowchuang signed the petitions does not mean they did not conspire to submit nominating petitions with valid signatures.

The charge in this case was that defendants conspired "to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator." (35a-38a; 70a-73a.)

Seewald has argued that the signatures were invalid and therefore that he did not conspire to submit valid signatures. This argument fails to consider the fact that when the conspiracy was entered into both defendants believed the signatures to be those of qualified voters. (33a; 31a.) MCL 168.544c(8) provides, "[a] filing official shall not count electors' signatures that were obtained after the date the circulator signed the certificate or that are contained in a petition that the circulator did not sign and date." Subsection 11(c) forbids someone who is not a circulator from signing as circulator, and under subsection 12 an individual that violates subsection 11 is guilty of a misdemeanor. Thus, when Seewald and Yowchuang signed petitions representing they had circulated the petitions, they

committed a misdemeanor and otherwise valid voter signatures became uncountable.

The fact that valid voter signatures became uncountable when defendants falsely signed the petitions does not mean it was legally impossible for them to conspire to commit a "legal" act. To be a "valid" signature, the voter must be a "qualified elector" who has lived in the congressional district for at least 30 days. Const 1963, art 2, § 1; MCL 168.10(1). Seewald stated under oath that the signatures on the nominating petitions were valid voter signatures. (31a.) That is, the names and signatures of the people included in each of the nominating petitions were actually qualified voters within Congressman McCotter's district who were eligible to place his or her name on the ballot.

The defendants entered into their conspiracy before they signed the petitions. And, under Michigan law their conspiracy was complete when their agreement was reached. *Bushard*, 444 Mich at 394; *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991). The fact that the voter signatures became uncountable *after* the conspiracy was complete, on account of Seewald and Yowchuang signing the petitions as circulators, does not preclude a finding that they conspired to commit a "legal" act in an illegal manner.

5. The construction of the statute urged by the People would not make all conspiracies a felony and thus eliminate the misdemeanor conspiracy to commit an offense prohibited by law crime from the statute.

The Court of Appeals majority held that the defendants could not violate MCL 750.157a(d) because they had the illegal immediate goal to defraud the Secretary of State and therefore "they conspired to commit an illegal act in an illegal manner." (10a.) But this erroneous reasoning would mean that a defendant could get away with agreeing to commit a legal act in an illegal manner simply by also agreeing to the necessary step of using an illegal manner. Under the majority's approach, agreeing to use the illegal manner taints the ultimate act, rendering it illegal too. This construction of the statute fails to apply the plain statutory text and essentially eliminates the crime of conspiracy to commit a legal act in an illegal manner. Worse, it makes it a defense to the charge to argue that one of the conspirators' goals was to break the law.

Seewald has argued that the People's construction of the statute would make all conspiracies a felony and thus would eliminate the misdemeanor conspiracy to commit an offense prohibited by law crime from MCL 750.157a. Not so. For example, the evidence at the preliminary examination established that defendants conspired both to commit an illegal act (a misdemeanor) and to commit a legal act in an illegal manner (a felony). Thus, the People's construction of the statute would allow that a misdemeanor conspiracy charge could have been filed.

Moreover, the People's construction of the statute will not lead to the unfettered ability of prosecutors to charge felony conspiracy in every case where two

people conspire to commit a misdemeanor. Here, the criminal act that Seewald and Yowchuang committed was not a goal in and of itself; it only had value as an intermediate step on the path to the ultimate lawful goal, which was getting the Congressman's name on the ballot. But in the hypothetical Seewald has previously advanced about two people agreeing to steal a dollar to buy a can of soda, the stealing of money is a goal with value, even if it could also be characterized as a step towards a further goal of buying a beverage in order to quench one's thirst. In cases in which the crime that is the subject of the conspiracy is a goal in and of itself, and there is no reason to believe an additional legal goal may be in play, the statutory language would not support a prosecutor charging felony conspiracy merely by speculating that that goal was going to lead to some further attenuated legal goal. Here, there was no such speculation—the goal of placing the Congressman's name on the ballot was the only reason the Seewald and Yowchuang signed as circulators petitions they had not in fact circulated–a goal they admitted under oath. (31a; 33a.)

CONCLUSION AND RELIEF REQUESTED

Here, Seewald and Yowchuang testified under oath that they intended to commit a legal act. These statements were admitted into evidence at the preliminary examination, and they established probable cause to believe that Seewald and Yowchuang conspired to commit a legal act in an illegal manner. The self-confessed goal of their conspiracy was to commit the legal act of filing nominating petitions to procure Congressman McCotter's placement on the ballot by signing the petitions as circulators when they had not been the people to collect the voters' signatures. The Court of Appeals majority clearly erred in interpreting the plain statutory text as not reaching the defendants' felony conspiracy. This Court should reverse the Court of Appeals' erroneous decision and reinstate the charge of conspiracy to commit a legal act in an illegal manner, and remand the case for trial.

Respectfully submitted,

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